

AMENDED IN SENATE MAY 7, 2003

AMENDED IN SENATE APRIL 28, 2003

SENATE BILL

No. 937

Introduced by Senator Ducheny
(Coauthors: Senators Bowen, Kuehl, and Soto)
(Coauthor: Assembly ~~Member~~ *Members Chan and Laird*)

February 21, 2003

An act to amend Sections 1208, 1212, 1217, 1228, and 1231 of, and to add Sections 1218.1, 1226.1, 1226.2, 1226.3, and 1229.1 to, and to add and repeal Section 1218.2 of,, the Health and Safety Code, relating to clinics.

LEGISLATIVE COUNSEL'S DIGEST

SB 937, as amended, Ducheny. Clinics: licensure and operation.

(1) Under existing law, the State Department of Health Services regulates the licensure and operation of clinics, including community clinics and primary care clinics, as defined. Existing law authorizes the department to provide consulting services upon request to any clinic to assist in the identification and correction of deficiencies.

Existing law requires any person, firm, association, partnership, or corporation desiring a license for a clinic or a special permit for special services to file a verified application with the department containing specified information.

Existing law authorizes the department to issue a license to an applicant only if it meets all requirements for clinic licensure, except that it proposes to operate its clinic out of an existing facility that does not satisfy certain applicable building requirements for the physical plant, provided that ~~(1)~~ (A) the applicant establishes that, where

possible and feasible, applicable building requirements have been met, and ~~(2)~~ (B) the applicant submits a specified plan of modernization. Existing law authorizes the Director of Health Services to waive building requirements for primary care clinics when certain conditions are satisfied.

This bill would revise provisions relating to the licensure and operation of clinics, including authorizing the department to charge a reasonable fee for the above consulting services, not to exceed \$100 per hour, when the consulting services are provided onsite at the clinic or its administrative offices.

This bill would provide that an application is not required where a primary care clinic adds a service other than a special service, or modifies an existing primary care clinic site, but would require the clinic to notify the department of the changes in service or physical plant *within a specified time period*.

This bill would require, rather than authorize, the department to issue a license to a primary care clinic that meets specified building requirements.

This bill would also require, rather than authorize, the director to waive building requirements for primary care clinics when specified conditions are satisfied.

This bill would authorize a primary care clinic that has held a valid, unrevoked, and unsuspended license for at least 5 years to apply for, and receive, a license to establish an affiliate clinic, without first conducting an initial onsite survey, in accordance with criteria set forth by the bill.

~~This bill would require the department, until January 1, 2010, to issue a single consolidated license to a primary care clinic meeting specified requirements that includes more than one physical plant maintained and operated on separate premises~~ *authorize a primary care clinic with more than one site to consolidate its administrative functions*. This bill would require a primary care clinic to comply with specified state requirements for public health protection for clinic personnel and volunteers.

(2) Existing law requires every clinic to be inspected in accordance with specified criteria. Existing law exempts certain facilities from this inspection requirement.

This bill would add a primary care clinic with specified accreditation to the list of clinics that are exempt from this inspection requirement.



(3) Existing law requires the department to notify a clinic of all deficiencies in its compliance with the provisions relating to clinic licensure and operations.

This bill would prohibit the imposition of a notification of deficiency, fine, sanction, or denial, suspension, or revocation of licensure against a clinic for violation of a regulation, under specified circumstances.

(4) Existing law requires the Office of Statewide Health Planning and Development, in consultation with the Community Clinics Advisory Committee, to prescribe minimum construction standards for adequacy and safety for the physical plant of clinics.

This bill would require the Director of Health Services to appoint a minimum of 15 members to the committee, and would specify requirements for membership and meetings. It would also specify the manner in which a clinic may establish compliance with the specified standards for construction adequacy and safety.

(5) Existing law requires a clinic to comply with licensing requirements, but allows a clinic to deviate from these requirements under certain circumstances, upon written request and substantiating evidence submitted by the clinic, and with the prior written approval of the department.

This bill would state that a primary care clinic is deemed to have submitted substantiating evidence for use of alternatives to personnel requirements if the primary care clinic is in a medically underserved area or a health professional shortage area, or if the clinic serves a medically underserved population.

(6) Under existing law, violation of the provisions relating to clinics is a misdemeanor.

By imposing new requirements on the licensure and operation of clinics, this bill would create new crimes, thereby imposing a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California's primary care clinics are essential partners with the state in providing a health care safety net for underserved, uninsured, and underinsured populations in a cost-effective manner.

(b) California's primary care clinics generate significant savings to the state and to local communities by providing primary and preventive care that responds to patients' needs before medical problems become serious or life-threatening, and by reducing the reliance of patients, including the uninsured and underinsured, on costly emergency room care, inpatient treatment and specialty care.

(c) Primary care clinics operate most similarly to private doctors' offices, but are required to comply with complicated, burdensome regulations more suited to hospitals, skilled nursing facilities, and other facilities intended to meet the 24-hour care needs of medically fragile patients.

(d) The need for primary care clinics is growing dramatically due to the continuing increase of uninsured and underinsured patients in California, an escalating unemployment rate, and a severely depressed economy.

(e) The current system of licensing primary care clinics is out of step with contemporary health care delivery systems, and results in a significant waste of taxpayer and community resources that could otherwise be devoted to patient care.

(f) Administrative streamlining of the licensure of new and continuing primary care clinics will result in substantial cost savings to the state and improved access to health care for underserved populations.

SEC. 2. Section 1208 of the Health and Safety Code is amended to read:

1208. (a) The department may provide consulting services upon request to any clinic to assist in the identification or correction of deficiencies to ensure that a high quality of care is provided by the clinic.

(b) The department may charge a reasonable fee for the services described in subdivision (a), not to exceed one hundred

1 dollars (\$100) per hour. This fee may be charged only for
2 consulting services provided onsite at the clinic or its
3 administrative offices. Under no circumstances shall the
4 department require a clinic to use the consulting services
5 authorized by this section.

6 SEC. 3. Section 1212 of the Health and Safety Code is
7 amended to read:

8 1212. (a) Any person, firm, association, partnership, or
9 corporation desiring a license for a clinic or a special permit for
10 special services under the provisions of this chapter, shall file with
11 the department a verified application on forms prescribed and
12 furnished by the department, containing the following:

13 (1) Evidence satisfactory to the department that the applicant
14 is of reputable and responsible character. If the applicant is a firm,
15 association, partnership, trust, corporation, or other artificial or
16 legal entity, like evidence shall be submitted as to the members,
17 partners, trustees or shareholders, directors, and officers thereof
18 and as to the person who is to be the administrator of, and exercise
19 control, management, and direction of the clinic for which
20 application is made.

21 (2) If the applicant is a partnership, the name and principal
22 business address of each partner, and, if any partner is a
23 corporation, the name and principal business address of each
24 officer and director of the corporation and name and business
25 address of each stockholder owning 10 percent or more of the
26 stock thereof.

27 (3) If the applicant is a corporation, the name and principal
28 business address of each officer and director of the corporation,
29 and where the applicant is a stock corporation, the name and
30 principal business address of each stockholder holding 10 percent
31 or more of the applicant's stock and, where any stockholder is a
32 corporation, the name and principal business address of each
33 officer and director of the corporate stockholder.

34 (4) Evidence satisfactory to the department of the ability of the
35 applicant to comply with the provisions of this chapter and rules
36 and regulations promulgated under this chapter by the department.

37 (5) The name and address of the clinic, and if the applicant is
38 a professional corporation, firm, partnership, or other form of
39 organization, evidence that the applicant has complied with the

1 requirements of the Business and Professions Code governing the
2 use of fictitious names by practitioners of the healing arts.

3 (6) The name and address of the professional licentiate
4 responsible for the professional activities of the clinic and the
5 licentiate's license number and professional experience.

6 (7) The class of clinic to be operated, the character and scope
7 of advice and treatment to be provided, and a complete description
8 of the building, its location, facilities, equipment, apparatus, and
9 appliances to be furnished and used in the operation of the clinic.

10 (8) Sufficient operational data to allow the department to
11 determine the class of clinic that the applicant proposes to operate
12 and the initial license fee to be charged.

13 (9) Any other information as may be required by the
14 department for the proper administration and enforcement of this
15 chapter, including, but not limited to, evidence that the clinic has
16 a written policy relating to the dissemination of the following
17 information to patients:

18 (A) A summary of current state laws requiring child passenger
19 restraint systems to be used when transporting children in motor
20 vehicles.

21 (B) A listing of child passenger restraint system programs
22 located within the county, as required by Section 27360 or 27362
23 of the Vehicle Code.

24 (C) Information describing the risks of death or serious injury
25 associated with the failure to utilize a child passenger restraint
26 system.

27 (10) Applicants for a license or special permit covering a
28 project within the meaning of Section 127170 shall submit a copy
29 of a certificate of need as required by the department.

30 (b) (1) No application is required where a licensed primary
31 care clinic adds a service that is not a special service, as defined in
32 Section 1203, or any regulation adopted thereunder, or remodels
33 or modifies an existing primary care clinic site. However, the
34 clinic shall notify the department, in writing, of the change in
35 service or physical plant *no less than 60 days prior to adding the*
36 *service or remodeling or modifying an existing primary care clinic*
37 *site. Nothing in this subdivision shall be construed to limit the*
38 *authority of the department to conduct an inspection at any time*
39 *pursuant to Section 1227, in order to ensure compliance with, or*

1 *to prevent a violation of, this chapter, or any regulation adopted*
2 *under this chapter.*

3 (2) Where the primary care clinic remodels or modifies its
4 existing physical plant, the notification to the department shall
5 include a signed statement from a licensed architect or a local
6 building department that certifies that any physical alterations are
7 in compliance with the minimum construction standards of
8 adequacy and safety for the physical plant, pursuant to subdivision
9 (b) of Section 1226 and that the individual signing the statement
10 is competent to determine that compliance.

11 (c) In the course of fulfilling its obligations under Section
12 1221.09, the department shall ensure that any primary care clinic
13 application form requiring information of the type specified in
14 subdivisions (a), (d), (h), or (i), is consistent with the requirements
15 of Section 1225, including the requirement that rules and
16 regulations for primary care clinics be separate and distinct from
17 the rules and regulations for specialty clinics.

18 (d) The department shall ensure that any information required
19 for submission to the department pursuant to this chapter is
20 specifically required by state or federal statute or regulation.

21 SEC. 4. Section 1217 of the Health and Safety Code is
22 amended to read:

23 1217. (a) An applicant for a license to operate a primary care
24 clinic, as specified in subdivision (a) of Section 1204 that meets
25 all requirements for licensure under this chapter, except that it
26 proposes to operate its clinic out of an existing facility that does
27 not satisfy all of the applicable building requirements for the
28 physical plant, other than fire and life safety requirements, shall be
29 issued a license by the state department if both of the following
30 requirements are met:

31 (1) The applicant establishes, by evidence satisfactory to the
32 state department, that, where possible and feasible, the applicable
33 building requirements have been met.

34 (2) The applicant submits a plan of modernization acceptable
35 to the state department that sets forth the proposed changes to be
36 made, during a period not to exceed three years from the date of
37 initial licensure, to bring the applicant's facility into substantial
38 conformance with applicable building requirements.

39 (b) Failure to complete the plan of modernization as approved
40 and within the time allowed shall constitute a basis for revocation

1 or nonrenewal of the applicant's license unless the applicant earlier
2 applies for and obtains a waiver from the department. The director
3 shall waive building requirements for primary care clinics where
4 he or she determines all of the following conditions are met:

5 (1) That the requirements cannot be met by an applicant, or that
6 they can be met only at an unreasonable and prohibitive cost.

7 (2) That the requirements are not essential to protect the health
8 and safety of the clinic staff or the public it serves.

9 (3) That the granting of the waiver applied for is in the public
10 interest.

11 SEC. 5. Section 1218.1 is added to the Health and Safety
12 Code, to read:

13 1218.1. A primary care clinic that has held a valid, unrevoked,
14 and unsuspended license for at least the immediately preceding
15 five years, ~~and with no demonstrated history of willful and~~
16 *repeated violations of this chapter or any regulation adopted*
17 *under this chapter*, and that has no pending action to suspend or
18 revoke its license, may file an application under this section to
19 establish a primary care clinic at an additional site, which shall
20 hereafter be referred to as the affiliate clinic. The department, upon
21 receipt of the completed application, shall issue a license to the
22 affiliate clinic, without first conducting an initial onsite survey,
23 under the following conditions:

24 (a) The existing primary care clinic, which shall hereafter be
25 referred to as the parent clinic, has submitted a completed
26 application for licensure for the affiliate clinic and the associated
27 application fee.

28 (b) The parent and affiliate clinics' corporate officers, as
29 specified in Section 5213 of the Corporations Code, are the same.

30 (c) The parent and affiliate clinics are both owned and operated
31 by the same nonprofit organization with the same board of
32 directors.

33 (d) The parent and affiliate clinics' operational policies and
34 procedures are substantially the same.

35 (e) The parent and affiliate clinics both follow substantially the
36 same training, competency testing, and quality assurance
37 standards for health care staff performing the same or similar
38 functions. If an affiliate clinic will be providing primary care
39 services different from the parent clinic, the professional director
40 shall develop training, competency testing, and quality assurance



standards in conjunction with the appropriate personnel at the affiliate clinic. It shall not be necessary for the professional director to be the same for all sites.

(f) The parent clinic has submitted evidence to the department establishing compliance with the minimum construction standards of adequacy and safety of the affiliate clinic's physical plant pursuant to subdivision (b) of Section 1226.

(g) Nothing in this section shall prohibit the department from conducting a licensing inspection at any time after receipt of the completed application.

SEC. 6. Section 1218.2 is added to the Health and Safety Code, to read:

1218.2. ~~(a) Notwithstanding any other provision of law, the department, upon application of a primary care clinic that meets all the criteria of subdivision (b) and other applicable requirements of licensure, shall issue a single consolidated license to a primary care clinic that includes more than one physical plant maintained and operated on separate premises.~~

~~(b) The issuance of a single consolidated license shall be based on all of the following criteria:~~

~~(1) There is a single governing body for all of the clinic sites maintained and operated by the licensee.~~

~~(2) There is a single administration for all of the clinic sites maintained and operated by the licensee.~~

~~(3) All policies and procedures for clinic employees apply to all clinic sites. However, no staff member shall be required to perform services at more than one facility.~~

~~(4) All training, competency testing, and quality assurance standards are substantially identical for all of the clinic sites.~~

~~(c) In issuing the single consolidated license, the department shall specify the location of each facility, as designated by the applicant. The single consolidated license shall be renewed annually. The initial fee and each annual fee shall be thirty dollars (\$30) per clinic site.~~

~~(d) A primary care clinic that is issued a single consolidated license pursuant to this section, at its option, may receive from the department a single Medi-Cal program provider number or separate Medi-Cal program provider numbers for one or more of the facilities subject to the single consolidated license. Irrespective of whether the primary care clinic is issued one or more Medi-Cal~~

~~provider numbers, a rural health clinic or federally qualified health center may file separate cost reports for each facility with the approval of the department, if being reimbursed on a reasonable cost basis.~~

~~(e) For purposes of preparing the Annual Utilization Report of Primary Care Clinics, the department and the Office of Statewide Health Planning and Development may require reporting of service utilization data separately by each facility of a primary care clinic issued a single consolidated license pursuant to this section.~~

~~(f) If an individual clinic site fails to comply with the licensing requirements, is issued an identification of deficiencies under Section 1229, or fails to comply with any rule or regulation promulgated by the department, the lack of compliance shall affect only the license of the individual site, and shall not affect any other compliant sites listed on the consolidated license.~~

~~(g) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date. The repeal of this section shall in no way affect the continued validity of licenses issued prior to the repeal. a primary care clinic with more than one site shall be entitled to consolidate its administrative functions.~~

SEC. 7. Section 1226.1 is added to the Health and Safety Code, to read:

1226.1. A primary care clinic shall comply with department requirements regarding annual health examinations, vaccination, or other public health protections for clinic personnel and volunteers, which shall be no more stringent than requirements applied to health facilities licensed under Chapter 2 (commencing with Section 1250).

SEC. 8. Section 1226.2 is added to the Health and Safety Code, to read:

1226.2. The director shall appoint a minimum of 15 members to the Community Clinics Advisory Committee provided for in subdivision (b) of Section 1226. This committee shall meet on an ad hoc basis and shall be composed of individuals who are employed or under contract to provide services to a community clinic on a full-time basis, as well as representatives of at least three nonprofit associations that represent 50 or more community clinic sites each.

SEC. 9. Section 1226.3 is added to the Health and Safety Code, to read:

1226.3. A primary care clinic may establish compliance with the minimum construction standards of adequacy and safety for the physical plant described in subdivision (b) of Section 1226 by submitting a written statement from a licensed architect or a local building department certifying that the applicable construction, remodeling, alteration, or other applicable modification of the physical plant is in compliance with these standards, and that the individual signing the statement is competent to determine that compliance. Enforcement of compliance with applicable provisions of the building code, pursuant to subdivision (b) of Section 1226, shall be within the exclusive jurisdiction of the local building department.

SEC. 10. Section 1228 of the Health and Safety Code is amended to read:

1228. (a) Except as provided in subdivision (c), every clinic for which a license or special permit has been issued shall be periodically inspected. The frequency of inspections shall depend upon the type and complexity of the clinic or special service to be inspected. Inspections shall be conducted no less often than once every two years and as often as necessary to ensure the quality of care being provided.

(b) (1) During inspections, representatives of the department shall offer any advice and assistance to the clinic as they deem appropriate. The department may contract with local health departments for the assumption of any of the department's responsibilities under this chapter. In exercising this authority, the local health department shall conform to the requirements to this chapter and to the rules, regulations, and standards of the department.

(2) The department shall reimburse local health departments for services performed pursuant to this section, and these payments shall not exceed actual cost. Reports of each inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the department and filed with the department.

(c) This section shall not apply to any of the following:

(1) A rural health clinic.

(2) A primary care clinic accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Accreditation Association for Ambulatory Health Care (AAAHC).

(3) An ambulatory surgical center

(4) An end stage renal disease facility.

(5) A comprehensive outpatient rehabilitation facility that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both.

(d) Notwithstanding paragraph (2) of subdivision (c), the department shall retain the authority to inspect a primary care clinic pursuant to Section 1227, or as necessary to ensure the quality of care being provided.

SEC. 11. Section 1229.1 is added to the Health and Safety Code, to read:

1229.1. No notification of deficiency, civil or criminal penalty, fine, sanction, or denial, suspension, or revocation of licensure, may be imposed against a primary care clinic, or any person acting on behalf of the clinic, for a violation of a regulation, as defined in Section 11342.600 of the Government Code, ~~if any of the following circumstances exists:~~

~~(a) The regulation was not adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(b) The regulation failed to give the primary care clinic, including any person acting on their behalf, fair warning of the conduct that the regulation prohibited or required.~~

~~(c) The primary care clinic or person acted in reasonable reliance upon written representations about what the regulation prohibits or requires that were issued by the department, including a delegate of the department under Section 1228, with actual or apparent authority to interpret, administer, or enforce the regulations, including every rule, regulation, order, or standard of general application, or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, unless the regulation has been adopted pursuant to Chapter 3.5 (commencing with~~

1 *Section 11340) of Part 1 of Division 3 of Title 2 of the Government*
2 *Code.*

3 SEC. 12. Section 1231 of the Health and Safety Code is
4 amended to read:

5 1231. (a) All clinics shall maintain compliance with the
6 licensing requirements. These requirements shall not, however,
7 prohibit the use of alternate concepts, methods, procedures,
8 techniques, space, equipment, personnel qualifications, or the
9 conducting of pilot projects, provided these exceptions are carried
10 out with provision for safe and adequate patient care and with prior
11 written approval of the department. A written request and
12 substantiating evidence supporting the request shall be submitted
13 by the applicant or licensee to the state department. The
14 department shall approve or deny any request within 60 days of
15 submission. This approval shall be in writing and shall provide for
16 the terms and conditions under which the exception is granted. A
17 denial shall be in writing and shall specify the basis therefor.

18 (b) A primary care clinic shall be deemed to have submitted
19 sufficient substantiating evidence supporting a request for
20 utilization of alternatives to personnel requirements contained in
21 regulations adopted under this chapter if the clinic is in a
22 geographic area that is either deemed under federal law, or
23 designated by the Office of Statewide Health Planning and
24 Development, as a medically underserved area, a health
25 professional shortage area, or as serving, in whole or in part, a
26 medically underserved population.

27 (c) If after investigation the department determines that a clinic
28 granted a waiver pursuant to this section is operating in a manner
29 contrary to the terms or conditions of the waiver, the director shall
30 immediately revoke the waiver.

31 SEC. 13. No reimbursement is required by this act pursuant
32 to Section 6 of Article XIII B of the California Constitution
33 because the only costs that may be incurred by a local agency or
34 school district will be incurred because this act creates a new crime
35 or infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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